IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

CRL.A.No. 66 of 2000()

CC.329/1997 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PALAKKAD

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APPELLANT: COMPLAINANT

M/S.NATIONAL CEMENT CORPORATION
DOOR NO.6/595, SAFA BUILDING
PIRIVUSALA, KODUMBU PANCHAYAT
PALAKKAD DISTRICT (REPRESENTED BY THE SALES ASSISTANT
AND POWER OF ATTORNEY HOLDER, M.A.ANVAR.

BY ADV. SRI.T.H.ABDUL AZEEZ

RESPONDENTS:ACCUSED & STATE

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1. SREEVALSAN, PROPRIETOR
   M/S.KERALA BUILDERS CHOICE
   CEMENT MERCHANT, CHANDRANAGAR
   PALAKKAD.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA
   ERNAKULAM, KOCHI-31.

BY ADV. SRI.SAJAN VARGHEESE K.
BY PUBLIC PROSECUTOR SRI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.66 of 2000

Dated this the 27th day of March, 2007

JUDGMENT

The appellant is the complainant who had initiated proceedings under Section 138 of the Negotiable Instruments Act which ended in the acquittal of the accused.

2. It is the case of the appellant/complainant that the impugned cheque was issued towards discharge of liability for supply of cement. The amount due as per the cheque is Rs.66,800/-. The cheque when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent demanding payment was not replied to. The proceedings were initiated in time as per the statutory stipulations.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 to 3 and Exts. P1 to P12. PWs' 2 and 3 are the bank managers who has produced the relevant records to establish the fact that the cheque was dishonoured for want of funds in the account of the accused.

4. The court below dismissed the complaint on the following grounds:

(i) In the lawyer notice the cheque number mentioned contained a mistake i.e., one digit was omitted.

(ii) Ext.P6 lawyer notice is not related to Ext. P3 cheque i.e, the impugned cheque. PW1, in cross examination on behalf of the complainant has admitted that two other post dated cheques issued by the accused that were got dishonoured were returned to the accused. He also stated subsequently that he does not know what happened to those cheques. He has also stated that there is no records with respect to the cheques returned to the accused.

(iii) There is no reasons as to why no prosecution was launched with respect to the above two cheques which were dishonoured.

5. I find that the court below has not considered the issues involved in the proper perspective and has dismissed the complaint. On certain matters which are totally inconsequential so far as the disputed issues are concerned. The fact of execution of the cheque has been testified to by PW1, the sales assistant who was examined at the instance of the complainant.

The suggestion in the cross examination to PW1 as well as in Section 313 of Crl.P.C. questioning is that the cheque issued as security was misused by entering a sum which was not due. According to the complainant, the cheque amount represented the amount due as per Ext. P2 series of invoices. It is also pertinent to note that the accused has not sent a reply to the lawyer notice demanding payment. His version is that he personally met the complainant and that the complainant assured him that no steps would be taken against the accused. The rest of the contention of the accused is based on certain irrelevant contradictions that has been brought out in the cross examination of PW2. It is also pertinent to note that the accused would be having documents to establish the supply received and the amounts paid, but no attempt has been made to adduce any evidence at his instance. The complainant has produced the entire documents available. The court below has not considered any of the above documents. On consideration of the evidence adduced in the matter, I find that the complainant has established the execution of the cheque and hence the statutory presumption operate. The accused has failed to rebut the same.

I find that the evidence adduced in the matter do establish beyond reasonable doubt that the accused is guilty for the offence alleged. Hence the findings of the court below are set aside. The accused is acquitted under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.66,800/- vide Section 357(3) of the Code of Criminal Procedure and in default, to undergo simple imprisonment for three months. Appellant is granted three months' time to pay the amount of compensation. He shall appear before the Judicial First Class Magistrate Court II, Palakkad on 28.6.2007 to receive the sentence.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl